

LEGAL NOTICE
Notice of Application for Variance

The Director of Labor and Industrial Relations (“Director”), pursuant to chapter 396-4(a)(3), Hawaii Revised Statutes (“HRS”), hereby gives notice of an application for a variance by the Hawaii Pest Control Association (“Association”), located at 820 Mililani Street, Suite 810, Honolulu, Hawaii 96813. The variance application was made on behalf of several of the Association’s members who are as follows:

Ace Termite, 47-479 Apau Lp., Kaneohe, HI 96734
Advance Termite & Pest Control, PO Box 17032, Honolulu, HI 96817
Aloha Termite & Pest Control, 1024-D Kikowaena Pl., Honolulu, HI 96819
Aloha Termite & Pest Control, 1544 Haleukana St., Bay 8, Lihue, HI 96766
Bowman Termite & Pest Control, 469 A Kalanikoa St., Hilo, HI 96720
Bowman Termite & Pest Control, 253 Waiehu Beach Rd., Wailuku, HI 96793
Bug Man Termite & Pest Control, 296 Alamaha St., Suite C-3, Kahului, HI 96732
Chemi-Pure Products, 1615 Democrat St., Honolulu, HI 96819
Dick’s Fumigation Service, 841 Alua St. #103, Wailuku, HI 96793
Diversified Exterminators, 1940 Democrat St., Honolulu, HI 96819
Fil-Am Termite Service, 745 Gulick Ave., Honolulu, HI 96819
Gima Pest Control, 96-1225 C Waihona St., Pearl City, HI 96782
Hawaii Fumigation, PO Box 856, Kealahou, HI 96750
Hilo Terminix, 565 E. Lanikaula St., Hilo, HI 96720
Hilo Termite & Pest Control, 28 Pookela St., Hilo, HI 96720
Insight Enterprises, 770A Alua St., Wailuku, HI 96793
Kama’aina Termite & Pest Control, 940 Queen St. #B, Honolulu, HI 96814
Kauai Termite Fumigation, 3176 Oihana St., Ste. 101, Lihue, HI 96766
Pacific Pest Management, Inc., 75-5591 Palani Rd., Ste 205, Kailua-Kona, HI 96740
Sandwich Isle Termite & Pest Control, 96-1368 Waihona St., Bay 4, Pearl City, HI 96782
Terminix International, 1001 Kamokila Blvd. #116, Kapolei, HI 96707
Terminix International-Kona, 73-5574 Olwalu St. #12, Kailua-Kona, HI 96740
Terminix Kauai, 2976 Aukele St., Unit B1, Lihue, HI 96766
Terminix – Maui, 891 Eha St., Wailuku, HI 96793
Xtermco, 94-435 Akoki St., Waipahu, HI 96797
Zac’s Fumigation, 320 Hukilike St., Bldg 4, Unit D, Kahului, HI 96732

The Association, on behalf of the above-named members, filed an application pursuant to section 12-53-7, Hawaii Administrative Rules (“HAR”), for a variance from the application of chapter 12-72.1, HAR, Walking-Working Surfaces, specifically section 29 CFR §1910.23(c)(1), Protection of open-sided floors, platforms, and runways, and 29 CFR §1910.28(a)(1), General requirements for all scaffolds. 29 CFR §1910.23(c)(1) requires the use of a standard railing for every open-sided floor or platform four feet or more above the adjacent floor or ground level. 29 CFR §1910.28(a)(1) requires the use of scaffolds if the work cannot be done from the ground or from solid construction. The Association, on behalf of the above-named members, requests a variance to permit tent fumigation workers who are in the process of erecting and removing the tenting to follow the construction industry standards, 29 CFR 1926, Subpart M, Fall Protection.

The Association, on behalf of the above-named members, requests the use of an alternate safety practice because the members are unable to attach guardrail systems on the homes. Homeowners are also unlikely to approve of the attachment of guardrails to their roofs because it

would compromise the integrity of the roof and may lead to leaks and other damages to the structure. The scaffold system would also require a certain amount of clearance around the home for it to be erected and most homes have flora, fauna or walkways surrounding the structure making the ground area uneven.

The Association, on behalf of the above-named members, proposes that its workers will continue to conduct its erection and dismantling activities pursuant to chapter 12-72.1, HAR, unless a Competent Person makes a determination that the specific requirements of chapter 12-72.1, HAR, are infeasible or creates a greater hazard at the particular jobsite, in which case, the workers will be subject to the construction industry standards, chapter 12-121.2, HAR, Fall Protection, specifically 29 CFR §1926.502, Fall protection systems and criteria and practices, specifically, 29 CFR §1926.502(h) [chapter 12-121.2, HAR], safety monitoring systems, and 29 CFR §1926.502(k) [chapter 12-121.2, HAR], fall protection plan.

The Director has determined that the application of chapter 12-121.2, HAR will provide employment and places of employment to the above-named members' employees working conditions that are as safe and healthful as those which would prevail if they complied with chapter 12-72.1, HAR. The Director is considering issuing the variance upon the following conditions:

1. Each of the above-named members will continue to conduct its tent erection and dismantling activities pursuant to chapter 12-72.1, HAR.
2. For purposes of this variance the 4-foot height requirement of 29 CFR §1910.23(c)(1) [chapter 12-72.1, HAR] shall be imposed instead of the 6-foot height requirement of chapter 12-121.2, HAR.
3. Each above-named member of the Association will ensure that a Competent Person will be at each jobsite. The Competent Person will be responsible to create a written Activity Hazard Analysis that will include a jobsite-specific determination of the feasibility of complying with chapter 12-72.1, HAR, prior to the installation and removal of the fumigation tent.
4. If the Competent Person determines that the requirements of chapter 12-72.1, HAR, are infeasible or creates a greater hazard for tenting activities at the specific jobsite, then the member shall comply with the construction industry standards, chapter 12-121.2, HAR, Fall Protection.
5. If the Competent Person determines that conventional fall protection pursuant to 29 CFR §1926.501 [chapter 12-121.2, HAR] can be implemented, then a personal fall arrest system, guardrail, or safety net system shall be utilized by the member's workers during the installation and removal of the fumigation tent.
6. If the Competent Person determines that the use of conventional fall protection under 29 CFR §1926.501 [chapter 12-121.2, HAR] is not feasible or creates a greater hazard then a written jobsite-specific fall protection plan shall be prepared by the Competent Person according to the requirements of 29 CFR §1926.502(k) [chapter 12-121.2, HAR], and shall, at minimum, include the following: (a) documentation on the reasons why the use of conventional fall protection systems (guardrail systems, personal fall arrest systems, or safety net systems) are infeasible or why their use creates a greater hazard; (b) a written discussion of other measures that will be taken to reduce or eliminate the fall hazard for

workers who cannot be provided with protection from conventional fall protection systems; and (c) the identification of each location where conventional fall protection methods cannot be used. The Competent Person is required to comply with 29 CFR §1926.502(k) [chapter 12-121.2, HAR] in the determination of the proper alternate fall protection to be used.


7. If the Competent Person determines that no other alternative fall protection under 29 CFR §1926.502(k) [chapter 12-121.2, HAR] can be implemented, a safety monitor may be used for that specific job and the name of the safety monitor shall be noted in the fall protection plan.
8. The use of a safety monitor must be in accordance with 29 CFR §1926.502(h) [chapter 121.2, HAR].
9. Each above-named member of the Association shall formulate a safety program that will provide annual training for their employees who are exposed to fall hazards. The training shall comply with the requirements of 29 CFR §1926.503(a) [chapter 12-121.2, HAR]. Each member shall verify compliance with the training requirements by preparing a written certification record pursuant to 29 CFR §1926.503(b) [chapter 12-121.2, HAR].
10. Each above-named member of the Association shall also conduct retraining of affected members pursuant to 29 CFR §1926.503(c) [chapter 12-121.2, HAR].
11. The above-named members shall give notice to affected employees by the posting of this notice in a prominent location where it will be readily observable by all affected employees.

Unless otherwise contested this variance will be granted to only the above-named members of the Association.

In conformance with section 12-53-10, HAR and this notice, if you oppose this variance application or would like to submit any comments, the Director must receive these comments by May 3, 2006. Any interested parties may request for a hearing no later than May 3, 2006. Written comments and requests for a hearing must be submitted in quadruplicate to the Director of Labor and Industrial Relations, Hawaii Occupational Safety and Health Division, 830 Punchbowl Street, Room 425, Honolulu, Hawaii 96813.

If no adverse comments or requests for a hearing are received by May 3, 2006, the variance will be granted and this shall serve as notice thereof.

Dated: April 13, 2006


for NELSON B. BEFITELE
Director
Department of Labor and
Industrial Relations